CHONG KEOW

v.

SHAARI YAACOB

HIGH COURT MALAYA, ALOR SETAR
LIM BENG CHOON J
[CIVIL SUIT 243 OF 1981]
15 NOVEMBER 1987

TORT: *Estate claim under s. 8 Civil Law Act 1956 - Dependency claim under s. 7 - Contributory Negligence.*

This claim was brought by the plaintiff as the administrator of the Estate of Wong Kooi Tai @ Wong Foo Keak (deceased) for the benefit of the estate under s. 8 of the Civil Law Act 1956 prior to the amendments made to it by virtue of Civil Law (Amendment) Act 1984. The plaintiff was also making a claim under s. 7 of the Act for the benefit of himself and his four children, as dependents.

The accident took place on 8 December 1978 at or about 9.25 p.m. The deceased was knocked down by the defendant whilst she with her daughter and a friend were trying to cross the Alor Setar/Sungei Patani road. The deceased was killed instantly.

Held:
In assessing the apportionment of liability the defendant was 70% to be blamed for the accident and the deceased 30%. Based on this, awards would be as follows:

(a)	Loss of expectation of life	RM 3,500
(b)	Loss under the dependency claim	
	(i) pre-trial RM9,450	
	(ii) post-trial RM6,398	RM15,848
(c)	Loss of future earnings under s. 8 of the Civil Law Act	RM11,830
(d)	Agreed Special Damages	RM 1,085
		RM32,263

The claims for general damages were made under:

(1) loss of expectation of life under s. 8 of the Civil Law Act;

(2) loss of benefits to the dependents of the deceased under s. 7 of the said Act; and

(3) loss of future earnings for the benefit of the estate under s. 8(2)(c) of the said Act for the years of the deceased's working life which had been curtailed by her premature death.

[Order accordingly.]

Cases referred to:
Sim Guan Soon & Anor. v. Khoo Ting Hong & Anor. [1968] 2 MLJ 203
Nance v. British Columbia Elec. Rwy. Co. [1951] 2 All ER 451
Chan Peng Fook v. Kan Pak Lee [1974] 2 MLJ 197
Tan Hong Kee v. Koh Swee Kok [1958] MLJ 191

Pickett v. British Rail Engineering Ltd. [1979] 1 All ER 774
Gammell v. Wilson [1982] AC 27
Davies v. Powell Duffryn Associated Collieries Ltd. [1942] AC 601

Legislation referred to:
Civil Law Act 1956, ss. 7, 8, 8(2)(c), 8(5)
Law Reform (Miscellaneous Provisions) Act 1934 [UK], s. 1(2), (5)

For the plaintiff - Choe Kuan Him; M/s. Syarikat Choe
For the defendant - Manjeet Singh Dhillon; M/s. Lawrence, Dhillon & Associates

JUDGMENT

Lim Beng Choon J:

This claim is brought by the plaintiff as the administrator of the estate of Wang Kooi Tai @ Wong Foo Keak (deceased) for the benefit of the estate under s. 8 of the Civil Law Act 1956 (Act 67) prior to the amendments made to it by virtue of Civil Law (Amendment) Act 1984. The plaintiff is also making a claim under s. 7 of the Act for the benefits of the dependents of the deceased who are:

(a) the plaintiff - the widower

(b) Chong Siew Fong - daughter; 13 years of age

(c) Chong Siew Ch'ng - daughter; 12 years of age

(d) Chong Siew Yun - daughter 9; years of age

(e) Chong Siew Moi - daughter 6; years of age

The accident took place on 8 December 1978 at or about 9.25 p.m. The deceased was knocked down by a motorcar bearing registration number No. AR 2691("the motorcar") driven by the defendant whilst she with her daughter and a friend, one Fan Ah Thai, were trying to cross the Alor Star/Sungei Patani road ("the road"). As a result of the accident, the deceased was killed instantly. At the end of the trial I held that the defendant was 70% to be blamed for the accident and the deceased 30%. I now give my reasons for the decision which I had arrived at the end of the trial.

As the plaintiff did not witness the accident, needless to say that he was of no help to this Court regarding the question of liability. His evidence is solely aimed at establishing the monthly earnings of the deceased prior to her death and her contribution towards the family expenses. I shall deal with the evidence of the plaintiff when I assess the quantum of damages.

The deceased's friend Fan Ah Thai, who at the material time, was walking along with the deceased and her daughter when they were trying to cross the road from the left edge of the road to the right side near a junction leading to Bedong town. As she had seen how the accident occurred, she was called to give evidence for the plaintiff as PW2. Her version of how the accident occurred is rather simple. In examination-in-chief she said that the accident happened on 8 December 1978 at about 9.25 p.m. when the deceased and she were crossing the road from the left side, as one faces Sungei Patani, in front of a petrol station near the junction leading to Bedong town to the right side of the road. Before crossing the road both she and the deceased looked to their left and to their right and they saw a car approaching them from their right but it was "very far away". She was not quite positive as to how the car could have knocked down the deceased as she said, to use her own words "I suppose the car must be speeding because before we crossed the road, the car was (still) a long distance away." Under cross-examination she said that the deceased was carrying her daughter

when she was trying to cross the road and PW2 was following the deceased. She admitted that when she looked to her left and to her right and saw the approaching car she could only estimate that it was safe to cross to the other side of the road. She frankly admitted that her estimation could have been wrong. The learned defence Counsel put to her that the car she saw was in fact following a lorry and that when the lorry had passed her, she and the deceased started to cross over to the other side of the road. To this she denied quite unequivocally. She persisted in saying that there was only that motorcar that was on the left half of the road and there was no lorry. In re-examination she reiterated that according to her estimation the car was far away and had the car not been speeding the accident would not have occurred. She then went on to make this pertinent statement. "If we thought we could not cross the road we would not take the risk."

The defendant, the driver of the motorcar, AR 2691, gave his version in this way. He said that while he was driving his car along the road he was following a small lorry for about 5 minutes. His car was about 40 feet behind the lorry. The first time he saw the deceased and her child and PW2 was when he was about 40 feet away from them. At that time the three persons were still at the edge of the road. After the lorry had passed the three persons and, by which time the defendant was about **10 feet to 20 feet** from them, he then saw them **about to** cross the road, and he was not able to do anything because they were too near, and hence he collided into them. The area where the accident occurred was in front of a petrol station and it was brightly lighted. The impact was at the front near side of his car. Under cross-examination he agreed that he did not mention about the lorry behind which he was following in the report lodged by him to the police (see p. 2 of the Agreed Bundle of Documents) and his explanation regarding this omission was that he was still in a state of panic when he lodged the said report as it was made some 20 minutes after the accident. He admitted that when he saw the three persons at the edge of the road some 40 feet in front of him, he did not sound his horn. He reiterated that when the lorry which he was following had passed the three persons, he then saw that they were holding hands and started to cross the road when his car was only 10 feet - 20 feet away from them. When the learned Counsel for the plaintiff questioned him further he said, to use his own words: "When they were 10'-20' away they bent their bodies about to cross the road. When I came close to them they crossed the road. I am not sure whether I knocked them down at the left edge of the road or the centre." When the learned Counsel posed this question: "It is not true that they were at the left edge of the road when you knocked them down?", he answered "Yes. I saw all of the 3 pedestrians. It was not dark that's why I could see them at the edge of the road." He also said that he could see all the three persons as his car headlights were shining on them. He agreed that the area where the accident occurred was a built-up area and there was a junction some 200 yards away leading to Bedong town. He denied that he was speeding although the stretch of road was a straight road. His reason for saying that he was not speeding was that there was a double-white line along the centre of the road and he kept his speed at 40 m.p.h. When he knocked the victim, she rolled over the bonnet, hit the windscreen, and rolled over the roof of his car.

The existence of two conflicting versions of how an accident occurred (as it happens here) is typical in almost all motor vehicle accident cases. In such a situation, I will have to carry out a searching evaluation and assessment of the totality of the oral evidence and also to resort to the documentary evidence in order to find out the truth. In my attempt to uncover the truth in order to arrive at a just decision, I must not lose sight of the principle that in assessing the evidence of the parties in a suit, it is not merely a question of whom to believe but rather whose version is more inherently probable which is the prime consideration.

a It is true that the evidence of PW2 is not infallible. Her assertion that the motorcar was travelling at great speed is at its best equivocal. She was also unable to give an approximate distance of the motorcar when she and her companions were trying to cross the road. Nevertheless she is quite unequivocal when she said that the motorcar "was a long distance away" and it was far away when they started to cross the road. She was also quite certain that before the deceased and she attempted to cross the road they did look to their left and *b* again to the right and that was when she saw the motorcar was far away. She was also very sure that there was no other vehicle on the left side of the road except the defendants' motorcar at the material time, and that there never was a lorry travelling in front of the defendant's motorcar. From my observation of the demeanor of this witness, the way she answered the question posed to her particularly when she was being cross-examined, and the tenor of her evidence, I have no hesitation in saying that she was trying to tell only *c* what she could remember and she was not prepared to tell a deliberate lie on any matter which she could not remember. The furthest she would go in her testimony was to opine that the motorcar must be speeding otherwise the accident would not have occurred. Be that as it may, as the present proceeding involves a civil action and not a criminal prosecution, the plaintiff can rely on the evidence of the defence to establish his case (see *Sim Guan Soon & Anor. v. Khoo Ting Hong & Anor.* [1968] 2 MLJ 203.

d As regards to the version of the defendant, I must say that even upon a cursory look at his evidence it would render his version inherently improbable. I say so because in the first place the defendant asserted that the three persons were standing at the edge of the road. They only started to make the move to cross the road after the lorry which the defendant was following had passed them, and, when the defendant's motorcar was about 10'- 20' away from them. Pausing here for a moment to make an observation, it is highly improbable that *e* the deceased and her companion, after having patiently waited for the lorry to pass, would be so fool-hardy as to attempt to cross the road when the defendant's motorcar was approaching them at a distance of 10-20 feet away. PW2 confirmed this proposition when she said, as one may recollect, that if they thought they could not cross the road they would not have taken the risk. In the second place by reason of the searching questions put to him by the learned Counsel for the plaintiff, the defendant had to vary his earlier statement *f* by saying that when he was about 10'-20' away from the deceased and her companion, they merely "bent their bodies" about to cross the road and when he **came closer** to them "they crossed the road". These assertions of the defendant appear to me that what he was trying to put across to this Court is that the deceased and PW2 were actually crossing the road when the defendant's motorcar was just about to reach them! Such a suggestion to say the least is preposterous, and they go only to enhance the inherent improbabilities of his story. *g* To cap it all the defendant admitted that he was not even sure whether he knocked down the deceased at the edge of the road or at the crown of the road; neither did he sound his horn at all material times.

Turning to the documentary evidence, I am afraid I cannot get much help from the reports lodged by PW2 and the defendant respectively (see pp. 1 and 2 of the Agreed Bundle of *h* Documents). The only point of some relevance is that in his report, Bedong Report No. 1696/ 78 which was lodged by him about 20 minutes after the accident, the defendant made no mention of the lorry which he said he was tailing. The defendant's explanation of this omission was that he was in a state of panic and hence he failed to inform the police officer who recorded the report about that lorry. I am not inclined to hold this omission against him simply because to my mind the existence or non-existence of the lorry is not very significant.

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If the lorry really existed and the defendant was tailing it before the accident occurred, it would only go to support the proposition which I have adumbrated above. On the other hand, if the lorry was never there, the defendant still could not be held to be blameless bearing in mind that (i) the stretch or road where the accident occurred was a straight road and the defendant's view was not obstructed, (ii) the area where the accident took place was in front of a petrol station and it was brightly lighted and (iii) more importantly that area was a built-up area with junction leading to Bedong town. These facts coupled with what a the defendant had said in his evidence are more than sufficient for me to hold that the cause of the accident is due to three factors namely:

(1) the defendant failed to keep a proper lookout at the material time

(2) he was driving at an excessive speed notwithstanding that he was approaching a built-up area and;

(3) he failed to give any warning or slow down even when he could have seen the three persons long before he reached the place where the accident occured had he kept a proper look-out.

Turning to the sketch plan (see p. 3 of the Agreed Bundle of Documents) I notice that the spot marked with the letter "X" shows a small pool of blood lying at the central double white line. This might at a glance indicate that the deceased was walking at the crown of the road or quite near to the central double white line before she was knocked down by the defendant's car. But this theory is exploded by the evidence of the defendant when he said that when the deceased was hit, "the victim rolled over the bonnet, hit the windscreen and rolled over the roof" before she fell off the motorcar. Bearing in mind that the point of impact was at the front near side of the car, three things can be distilled from the assertion of the defendant namely:

(1) when the front nearside of the motorcar hit the deceased, she was flung up to the bonnet, rolled over the windscreen and she kept rolling across the entire width of the roof of the motorcar until she fell on to the centre of the road; and

(2) the force of the impact must be very great to cause the deceased to be flung up to the roof of the car and to roll across it; and

(3) as the deceased was hit with such great force I do not think I am wrong to infer that the motorcar was travelling at a high speed.

Finally the absence of any brake mark is a further indication of the fact that the defendant had failed to keep a proper look-out until it was too late to apply his brake, or to take any evasive action, or, as he himself had said in his evidence "I was not able to do anything because they were too near and I collided with them". The absence of brake mark is also consistent with the fact that the defendant was travelling at a high speed.

For the reasons as stated above I am more than satisfied that the accident was caused by the negligence of the defendant. However that may be, the next question is: Was the deceased guilty of contributory negligence in the sense that she had failed to take reasonable care of herself and contributed, by this want of care, to her own injuries which turned out to be fatal? On the totality of the evidence I think she was. In the first place PW2's evidence is as I have said earlier quite equivocal. She was not able to say how far from the edge of the road she and the deceased were standing when the accident took place. One has therefore to turn to the documentary evidence to search for the truth and upon my scrutiny of the evidence one thing is certain and that is the accident did not take place at or very near to

the area where the sidewalk or grass verge joined the road. I say so because had the point of impact been at or near the sidewalk or the grass verge the motorcar would not be in the position as shown in the sketch plan at p. 3 of the Agreed Bundle of Documents. Secondly the spot "X" showing the small pool of blood is indicative of the spot where the deceased fell after she had rolled across the roof of the car. Taking into consideration that the width of the left half of the road, as one faces Sg. Patani, was about 12 feet wide (see the sketch plan in the Agreed Bundle of Documents), the accident must have taken place at the shoulder of the left half of the road some 3'- 4' away from the edge of the road.

Upon my scrutiny of the totality of the evidence, I think I could safely draw the following inferences:

(i) when the deceased turned to her right and saw the car approaching from that direction she thought it was still quite far away to enable her to cross the road safely;

(ii) she carried her child and leisurely started to cross the road; and

(iii) she failed to give any thought to the fact that her estimation of the distance of the approaching motorcar might be incorrect and that the motorcar might be travelling at a high speed which she should have done particularly when it was nightime and one had to be more careful to ascertain the distance and the speed of an approaching car. It might well be said that the deceased was unable to walk at the normal speed as she was carrying her child. If that be so she should not have taken the risk to cross the road until she was reasonably sure that she could do so safely.

For these reasons I am impelled to hold that she had failed to take proper care of her own safety and that of her child. She had therefore contributed to her injuries which unfortunately caused her death - (see *Nance v. British Columbia Elec. Rwy. Co.* [1951] 2 All ER 451).

In assessing the apportionment of liability I hold the defendant is 70% to be blame and the deceased 30% - see *Chan Peng Fook v. Kan Pak Lee* [1974] 2 MLJ 197.

I shall now proceed to assess the quantum of damages. The amount of special damages particularised in p. 6 of the Bundle of Pleadings has been agreed at RM1,550 on the basis of 100% liability. It has also been agreed by the parties that at the time of death, the deceased was 31 years old.

The claims for general damages are made under the following heads:

(1) loss of expectation of life under s. 8 of the Civil Law Act 1956 (Act 67);

(2) loss of benefits to the defendants of the deceased under s. 7 of the said Act; and

(3) loss of future earning for the benefit of the estate under s. 8(2)(c) of the said Act for the years of the deceased's working life which had been curtailed by her premature death.

The plaintiff, the widower of the deceased, in his evidence said that prior to her death, the deceased was working as a dulang washer in a tin mine known as Leong Foong Tin Mine. She was a daily paid employee and her average earning was RM10 per day exclusive of overtime. Her average income per month according to the plaintiff was between RM320 to RM330 and she used her earnings for her own expenses and her household expenses. With that earnings she contributed about RM200 per month towards the household expenses. The plaintiff himself worked as an odd job labourer and he earned about RM300 per month and he contributed between RM100 to RM200 per month towards the household expenses exclusive of the monthly rental of the matrimonial house which was RM35 per month and

which was borne by him. At the time of the death of the deceased she left behind the widower and four children ranging from the age of 6 years to 13 years and only two of the children, the two youngest ones, were schooling. The household expenses came up to between RM300 to RM400 per month excluding the monthly rental of RM35 per month of the house in which the family was residing. The deceased's working hours were between 8 a.m. to 4 p.m. and the tin mine where the deceased was working supplied one meal to its employees daily and the mealtime was between 4.30 to 5.00 p.m. The deceased had her afternoon meals supplied by her employer but only when she worked late. Under cross-examination, the plaintiff admitted that the deceased's average monthly earnings could be less than RM320 but later resiled and persisted in saying that the deceased's average monthly earning was RM320. He however admitted that the deceased contributed between RM100 to RM200 towards the household expenses. On re-examination he again changed his tune and said that the deceased's contribution to the household expenses was RM200 per month. The plaintiff called another witness, PW2, who was a friend of the deceased and who was also working as a dulang washer but with a different tin mine. I do not think I need to labour myself over her evidence as she had never worked in the same mining company where the deceased was working prior to her death.

From the evidence of the plaintiff's witnesses, I take note of the fact that the deceased was a daily paid dulang washer. It is obvious that should she be absent from work on any day she would not get paid for that day. It is unrealistic to accept the fact that she worked every day from 8.00 a.m. to 4.00 p.m. throughout the 365 days in a year. Indeed the plaintiff in his evidence admitted that "once in a while she took leave - when there was no work she stayed at home".

It is therefore reasonably probable that there were times when the deceased would not be working for personal reasons such as when she was taken ill or when she had taken time off to attend to her private affairs and to celebrate certain Chinese festive days. It is also reasonably probable that at times the service of the deceased as a dulang washer would not be required by the tin mine where she was employed because of the low production of tin ore - this is corroborated by the evidence of the plaintiff when he said: "... when there was no work she stayed at home". In view of this discussion, I think it is fair and reasonable to hold (and I do so hold) that the deceased could not, on the average, have worked for more than 25 days in a month and her average earnings could not exceed RM250 per month.

As to the number of years purchase, the deceased was 31 years of age at the time of her death. She could therefore have had a working life span of 24 years taking the figure of 55 as the retiring age. However bearing in mind that the type of work she was doing is somewhat strenuous and physically demanding I think it is again fair and reasonable to assess the number of years' purchase as 13. With these figures in mind my assessment of the quantum of damages under and the four heads based on 100% liability is as follows:

(1) *Loss of expectation of life.* The conventional figure is, if I am not wrong, RM5,000

(2) *Loss of benefits to the dependants pursuant to s. 7 of the Act.*

In assessing the damages under this head the difficulty that I am faced with is that the evidence shows that the household expenses were not carefully segregated. In the result, it is difficult to ascertain as to how much was paid to the household expenses and by whom. However bearing in mind that since the plaintiff said that though he made a living by doing odd jobs nevertheless his average income was about RM300 per month, one would expect him to contribute at least a sum of RM250 per month towards the household expenses which

we were told was about RM300 to RM400 per month. Such a proposition is not unreasonable considering that it is an accepted fact that the husband is usually the main, if not the sole supporter of his family, unless he is either a layabout or when the wife's earnings are so much more than that of her husband that she is prepared to bear a bigger portion of the household expense. In this respect it must also be borne in mind that a wife is normally under no legal obligation to assist the husband or to contribute to the household expenses and even if she has voluntarily undertaken to do so she can at any time discontinue her contribution - see *Tan Hong Kee v. Koh Swee Kok* [1958] MLJ 191. Taking all these into consideration I hold that the deceased's contribution to the household expense could not exceed RM150 per month. Based on this figure the award under this head as follows:

(a) Pre-trial loss based on a loss of RM150 per month for 90 months (that is from 8 December 1978, the date of the accident, to 23 June 1986) it would come to a sum of RM13,500

(b) Post-trial losses: Based on a loss of RM150 with 13 years purchase but minus 90 months thereby bringing down the years' purchase to 6 (a round up figure), the award under this subhead is, according to the annuity table, RM9,136.25 which I would round it up to RM9,140

(c) From the above calculations the total award under this head is therefore RM13,500 plus RM9,140 = RM22,640

(3) *Claim for loss of future earnings under s. 8(2)(c) of the Act*

In the leading case of *Pickett v. British Rail Engineering Ltd*. [1979] 1 AII ER 774, the House of Lords held that where a plaintiff's life expectancy was curtailed as a result of the defendant's negligence, the plaintiff's future earnings were an asset of value of which he had been deprived and which could be assessed in terms of money. In principle therefore the plaintiff, who died before his appeal could be heard, was entitled to be compensated for the loss of future earnings in the "lost years" which should be assessed as a separate head of damages under s. 1(2)(c) of the English Law Reform (Miscellaneous Provisions) Act 1934 which is *pari materia* with s. 8(2)(c) of our Civil Law Act 1956. The House also held that the damages under this head were to be assessed after deducting the plaintiff's own living expenses which he would have expended during the "lost years" since they would not have formed part of his estate. The principle as enunciated in the *Pickett* case was adopted and approved by the House once again in *Gammell v. Wilson* [1982] AC 27. Although it is acknowledged that a plaintiff could bring a claim under s. 1(2) of the Law Reform (Miscellaneous Provisions) Act 1934 for damages accrued to the estate of a deceased victim and at the same time a further claim for damages under the Fatal Accidents Act 1846 to 1908 (which is the counterpart of s. 7 of our Civil Law Act) for the benefits of the dependants of the deceased victim, nevertheless to avoid the injustice of requiring the defendant to pay twice over to the dependants who are also the beneficiaries of the deceased's estate and therefore are also entitled to a share of the award under the 1934 Act it was held by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd*. [1942] AC 601 that damages recoverable under the 1934 Act must be taken into account in assessing damages under the Fatal Accidents Acts in the case of dependants who would benefit from the damages under the 1934 Act, for s. 1, subsection 5 of the 1934 Act (which is in *pari materia* with s. 8(5) of our Civil Law Act) did not establish a statutory exception to the general rule that, in assessment of damages under the Fatal Accidents Acts, any benefit accruing to a dependant by reason of the relevant death must be taken into account. This principle was

adopted with approval by a Supreme Court in the unreported case of *Golam Hassan b. Mohamed v. Susila a/p Sinnakanu & Anor*. under the Supreme Court Civil Appeal No. 102 of 1985. I am bringing this matter up since in the instant case the learned Counsel for the plaintiff suggested that the plaintiff who is the sole beneficiary of the deceased who died intestate pursuant to the Distribution Ordinance 1950 there should be no merger of the benefits which he derived from the 'estate claim' under s. 8 of the Act with his dependency claim under s. 7 of the Act. In short it is suggested that the plaintiff is entitled to the damages under the two claims. On the other hand the learned defence Counsel disputed the soundness of such a proposition. In considering this issue and bearing in mind the principles set out in the aforesaid authorities I am of the view that the plaintiff is not entitled to be paid twice over and that any award made to him under the said s. 8 must be taken into account in assessing his share of the award under the said s. 7. However, as the four children are not beneficiaries of the estate of the deceased they are entitled to their full shares of the dependency claim made on their behalf.

In assessing damages due to the estate of a deceased under the 'lost years' principle, a Court should only deduct the deceased's own living expenses. It is wrong to take the surplus of the deceased's earnings which he would have likely to save as the base figure for calculations under this head of damage. In the instant case the average income of the deceased was and should be RM250 per month. For this amount, I think it is fair to deduct a sum of RM100 per month in which she would probably have to spend for certain basic things like clothings, food transportation, medical expenses and entertainment. That would leave her with a spendable surplus of RM150 per month. Using 13 years' purchase to assess the damages under this head, the amount (according to the Annuity Table) would come to RM16,908.44 which I would round up to RM16,900

(4) *Special damages*, as stated earlier, have been agreed at RM1550

Based on a 70% liability, the aforesaid awards would be

(1) Loss of expectation of life	RM3,500
(2) Loss under the dependency claim	
(a) pre-trial : RM 9450	
(b) post-trial : RM 6398	
	RM15,848
(3) Loss of future earnings under s. 8 of the Act	RM11,830
(4) Special damages as agreed	RM 1,085
	RM32,263

The amounts awarded under the aforesaid items 2(a) and 4 shall carry interest at the rate of 3% p.a. from the date of the accident to the date of the judgment and thereafter at the rate of 8% p.a until realisation.

The amounts awarded under the aforesaid items 1 and 2(b) shall carry interest at the rate of 6% p.a. from the date of the service of the writ to the date of the judgment and thereafter at the rate of 8% p.a. until realisation.

There shall be no interest in respect of the amount awarded under the aforesaid item 3.

As the plaintiff is the sole beneficiary of the estate of the deceased, the plaintiff is entitled to the amounts of RM3,500 awarded under item 1 above and RM11,830 awarded under item 3 above totalling RM15,330 which shall be paid over to him. As to the dependency claim under item 2 above amounting to RM15,848 plus the agreed special damages of RM1085 totalling RM16.933, I will apportion a sum of RM6,933 to the plaintiff as his share of the dependency claim. As this sum is less than the amounts which he will get from the estate claim, it is therefore extinguished in that it has merged into the estate claim.

The amounts under the dependency claim and the award of special damages still remaining come to RM10,000 and I will apportion this sum to the four infant dependants as follows:

(a) Chong Siew Fong	RM 2,000
(b) Chong Siew Ch'ng	RM 2,000
(c) Chong Siew Yun	RM 3,000
(d) Chong Siew Moi	RM 3,000
	RM10,000

The monies due to the infant dependants who are still minors shall be deposited in an approved Savings Bank on trust for the minors.

Also found at [1988] 1 CLJ 325